

# MEDICARE PRESCRIPTION DRUG BENEFIT

Mr. WYDEN. Mr. President, as all Members of this body know, the Federal Government is about to begin one of the biggest expansions in Federal entitlement programs in our country's history. In a few weeks, the senior citizens of our country will be eligible for a much-needed prescription drug benefit, and I rise to talk about that program tonight.

I am particularly troubled about the fact that the Federal Government, in launching this program, is not going to be a smart shopper. You would think, after Katrina, given the huge hemorrhaging in our Federal budget, this would be a top priority for the Federal budget, to shop smart, to squeeze every possible bit of value out of the money that is being spent for critical programs, such as purchasing prescription drugs for senior citizens. Unfortunately, that is not the case. At a time when the costs for this program have escalated from about \$400 billion to over \$530 billion, with a 10-year estimate for this benefit projected to cost over \$720 billion, what is locked into current law is an inability to get the best value for the purchase of those medicines.

It is well understood all across the country that anybody who goes shopping in the private sector tries to get the most for their dollar by stressing their bargaining power. Certainly, the senior citizens of this country have a whole lot of bargaining power. You would think it would be the position of the Federal Government to try to take advantage of that bargaining power in order to strike the best deal for older people and taxpayers. Notice that I emphasize the words "bargaining power"—not price controls, not rules set in Washington, DC, a one-size-fits-all approach, nothing that would discourage innovation among pharmaceutical companies, but simply bargaining power. Of course, that is what all the smart buyers do in the private sector today.

Take, for example, a big timber company in my part of the world. They represent a lot of workers. They go out and bargain with pharmaceutical companies, insurance companies, and others. They get the most for their dollar. The small company, on the other hand, doesn't have that kind of leverage and, to a great extent in this country, individuals and small companies basically end up subsidizing the big companies and people with clout in the marketplace. Again, nobody is talking about price controls. We are talking about economics 101. If you are buying in volume, if you have the opportunity to use marketplace forces to get the most for your dollar, you try to do it. You try to use the powerful forces of economics 101, which is the market power of bulk purchasing.

Unfortunately, that is not going to be done in the area of purchasing prescription drugs for older people in our

country, beginning the first of the year. In fact, what the Federal Government is doing is essentially turning on its head the principle of smart shopping. What the Federal Government would be doing, unless the Congress steps in, is pretty much like somebody going to Costco and buying toilet paper one roll at a time. The Federal Government isn't using its bargaining power to hold down the cost of medicine. At a time when prescriptions are one of the fastest growing forces in American health care, that defies common sense.

Some errors are known as errors of omission; others are known as errors of commission. The fact that the Secretary of Health and Human Services is prohibited from using the power of bulk buying to hold down the cost of medicine for seniors is, in my view, one of the most outrageous errors of commission in the history of health care legislation. The Medicare prescription drug statute didn't forget to give the Secretary of Health and Human Services bargaining power to hold down the cost of medicine; the statute specifically told the Secretary he could not have such authority to get a fair deal for older people. So what we have at a time when the cost of the program is going through the stratosphere, at a time when seniors are trying to decide whether to sign up, is we have a statute that denies the Secretary of Health and Human Services the same marketplace tool that any consumer has in our communities across the country—the power to leverage bulk purchasing to get a better price. Federal law now denies the Secretary of Health and Human Services what hundreds of other Federal officials have—the power to get a better price for the taxpayer.

The Congress did not tell the Army they had to go out and buy one tent at a time for our soldiers in Iraq. The Congress didn't tell the Federal Emergency Management Agency they had to buy one mobile home at a time for hurricane victims. But unbelievably, Congress told Medicare they have to go out and buy one drug at a time as it relates to other people. So Medicare can't do what any savvy shopper in our country does, which is use their leverage in the marketplace to get lower prices. I think it is outrageous to have this double standard that prohibits Medicare from doing what all the other consumers in America can do, and it is time, in my view, to fix that.

Tomorrow, the Senate will have a bipartisan opportunity to do just that. Senator SNOWE and I, along with Senator MCCAIN and Senator STABENOW and a number of others, will offer an amendment that will lift the outrageous restriction on the Federal Government's ability to bargain, and under our bipartisan amendment the Secretary of Health and Human Services would have the authority to negotiate for lower drug prices.

I particularly wish to thank Senator SNOWE. She and I have worked on this a number of years. Both of us voted for

the prescription drug legislation. We have the welts on our back to show for it, and even the night of the vote we said we were going to come back and try to improve this, particularly to improve it in a way that would make sense for older people and for taxpayers. So we see our bipartisan amendment as an effort to follow up on the promise we made to our citizens back home.

I thank Senator SNOWE, who is always trying to find common ground, bipartisan common ground, which is, of course, the only way you get important work done in the Senate.

I also want to say a special thanks to Senator MCCAIN, who is constantly focused on ways to expose waste, get more for the taxpayer dollar, and also Senator STABENOW of Michigan. Senator STABENOW has spent enormous amounts of time on a whole host of issues advocating for older people and the cost of prescription drugs, and I am convinced that this issue would never have gotten the visibility and the attention that it warrants were it not for Senator STABENOW's focus on it.

I also would like to say the same about Senator FEINSTEIN. She and I agreed on the night of the vote that we were going to join Senator SNOWE in a bipartisan effort to get a fairer and better deal for older people, and I thank her as well for all of her effort.

Now, Mr. President, the Snowe-Wyden legislation includes specific language that prohibits price controls and the setting of prices in America. This is something I feel very strongly about, and I know the Presiding Officer has a great interest in encouraging innovation and research. I think we all understand what is going on in the pharmaceutical field. We are seeing breakthroughs every single day, and one of the most important steps we can take in the public policy arena is to foster innovation and research even in my fair flat tax proposal that I introduced this week, and I know the Presiding Officer has great interest in tax reform, keeping the research and development tax break because it is important. So I don't take a backseat to anybody in terms of encouraging innovation and research, and one of the key ways to promote innovation and research is to avoid price controls, the setting of prices in Washington, DC, anything that would lead to policies that freeze the Government's ability to encourage innovation.

So what we have done in this particular amendment is put in a statutory restriction on price controls, on the setting of prices so that it is clear to everyone in the Senate that all we wish to do in our bipartisan effort is to untie the hands of the Secretary of Health and Human Services and put Medicare in the position of being a smart shopper. I cannot for the life of me think why Medicare should not have the same power to negotiate what other programs and governments have, that others in the private sector would

have, and with our bipartisan legislation, Medicare would have that power.

This is particularly important because savings from negotiations are only going to come about as it relates to single-source drugs if this restriction is lifted. Without it, it seems to me we will not have negotiations for these single-source drugs where there isn't the kind of competition and marketplace forces. Many single-source drugs are particularly important for older people. We are talking about drugs such as Lipator, Zocor, and Prevacid. Lipator, for example, was at the top of the list of drugs most often taken by older people, and all of the drugs I mentioned were in the top 20 in terms of drugs used by seniors.

So when it comes to savings—and this was noted by the Congressional Budget Office in a letter to me and Senator SNOWE last year—it seems to me that you especially need the power to negotiate when you are talking about single-source drugs. Given the importance of Lipator in the marketplace, prevalence in terms of the older population, I hope that as Senators look at this amendment, they will see the value of giving the Secretary the power to negotiate. It is particularly critical when it relates to single-source drugs.

In my view, it is disappointing that the way the underlying legislation was drafted, the fundamental base bill is going to require more than a simple majority for us to prevail. Certainly, there are a lot of special interests in this town that do not want the Federal Government to be a smart shopper. The number of lobbyists that are working against this legislation, which I will tell you I think is just about the most offensive restriction I have seen in health policy, the number of lobbyists working against our bipartisan amendment is just staggering. And make no mistake about what the special interests who oppose our legislation want to do. They would rather soak the taxpayer and add to the budget deficit than to have to negotiate with the Federal Government like all other businesses. They are basically saying: Look, we are special. Don't require us to have to go out and bargain. We shouldn't have to do what everybody else does.

Everybody else in America who has marketplace clout is allowed to use it. That is what markets are all about. But because of the power of the special interests, this restriction prohibits Medicare from using the kind of marketplace forces that everybody else uses, and it is not right.

I am sure that seniors and their families across the country are going to be especially concerned about the fact that this legislation is going to increase their Part B premiums. But it seems to me that at a time when their part B premiums are going to go up, when they are going to have to pay extra costs out of their pocket for copays and deductibles and other out-

of-pocket expenses, that alone would be a reason why we would look to give Medicare more bargaining power to hold down the cost of this program.

Seniors are going to have less in their pocket to pay for prescription drugs and to sign up for this program. But the legislation was carefully written to make it tough on us and to increase the number of Senators we would have to have to pass this legislation. We are going to need more than a simple majority, and I think it is particularly unfortunate that at a time when seniors are going to see their Part B premiums go up, that we are not going to give them this opportunity to seek some real savings in what they have to pay for prescription medicine.

I hope that Senators are going to be supportive of this legislation. I am sure when a Senator goes home and discusses prescription drugs, one of the first things that folks at home are going to ask is: How are you going to keep the cost down? What are you doing, Senator, to hold down the cost of medicine? The private sector is doing it, other Government programs are doing it; what are you doing, Senator, to hold down the cost of medicine?

Tomorrow, the bipartisan group of Senators I mentioned—Senator SNOWE leading our effort, myself, Senator MCCAIN, Senator STABENOW, and others—will be saying: Look, we have something that is going to provide an opportunity for the Federal Government to be a smart shopper, to use its marketplace clout, and to hold down the cost of medicine when seniors are seeing an increase in their out-of-pocket expenses.

The Congressional Budget Office estimates that there is going to be an 8.5-percent increase in the cost of this program, and the Government Accountability Office has shown that the prices for existing drugs are increasing two and three times the rate of inflation.

This is a prescription for a program that does not work. That is a failure, and I will tell you I don't want to fail our country's seniors. I voted for the prescription drug law. I want to make it work. But I will tell you, I am very troubled about the prospect that if steps are not taken to hold down the costs of this program, there is a real prospect that a great deal of money will be spent on a relatively small number of people because we will not have the number of seniors signing up that we need.

We need to make this program work. It is important. Prescription drugs are a lifeline. Affordable prescription drugs are essential for the Nation's older people. Too many of these drugs are simply priced out of the reach of older people.

At the end of the day, the bipartisan legislation that Senator SNOWE will offer with myself and our bipartisan group is simply common sense. Let's make Medicare a smart shopper by al-

lowing bargaining power. Let's stop this idea of forsaking our ability to be a savvy shopper, and let us make sure that when Medicare goes out and tries to make sure that the costs of this program are held down, that it has the tools it needs in its cost-containment arsenal to get the job done right and to make sure that the costs of this program, for both taxpayers and seniors, are held down.

Mr. President, I ask unanimous consent that Senators FEINSTEIN, DAYTON, KOHL, and FEINGOLD be added as cosponsors of the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. Mr. President, this bipartisan measure will be voted on tomorrow. My sense is that because the day will be very hectic, having to vote on many amendments, that there will not be much time for explanation of this measure. Senator SNOWE, Senator STABENOW, and others who spent so much time on this issue are going to want to speak. I will tell the Senate tonight this is one of the most important issues to come up in a long time. This program will be one of the biggest, if not the biggest, expansions of Federal entitlement policy we have ever seen. Why we wouldn't want to go about this right and make the Government a smart shopper, a savvy shopper, why we wouldn't want to do that is beyond me.

What we have is an error of commission. What you saw is, in this legislation, very powerful special interests said we want a unique set of rules to apply to us: We shouldn't have to negotiate, even though everybody else negotiates with the Government and the private sector; give us a free ride; restrict, as a matter of law, the ability of the Secretary of Health and Human Services to make sure that seniors and taxpayers got a square deal.

That is not right. This is about common sense. This is about the Federal Government being a smart shopper. This is about standing up for taxpayers and seniors.

I would like to wrap up tonight by reading a bit from the AARP letter of endorsement for the legislation. Mr. President, I am going to read briefly from this letter, but I ask unanimous consent that the AARP letter endorsing the bipartisan measure to contain the cost of medicine be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AARP,  
November 1, 2005.

The Hon. RON WYDEN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR WYDEN: AARP supports your amendment to the Senate fiscal year 2006 Budget Reconciliation bill to provide for the ability of the Secretary of Health and Human Services to participate in the negotiations between pharmaceutical manufacturers and prescription drug plans under the Medicare Part D program.

Prescription drug prices continue to rise much faster than the rate of inflation. AARP's latest Rx Watchdog report released this week found that prices for nearly 200 of the most commonly used brand name medications rose 6.1 percent during the 12 month period from July 2004–June 2005. At the same time, the rate of general inflation was 3 percent. These drug price increases particularly hit older Americans, who use prescription drugs more than any other segment of the U.S. population.

In two weeks, millions of older and disabled Americans will have the opportunity to choose prescription drug coverage as part of their 2006 Medicare benefit options. The new Medicare prescription drug benefit will help millions of beneficiaries afford needed medications. Improvements to the Medicare Modernization Act are necessary to strengthen the benefit and the Medicare program. We believe the first step is to keep the drug benefit affordable for beneficiaries as well as taxpayers.

While the competitive structure already existing in the MMA may help to bring prescription drug prices down, we believe that giving the Secretary the authority to participate in negotiations may also help to make prescription drugs more affordable for Medicare beneficiaries.

We look forward to working with you and your colleagues on both sides of the aisle to ensure that the new Medicare Part D benefit remains affordable over time. If you have any further questions, please feel free to contact me, or have your staff contact Anna Schwamlein of our Federal Affairs staff at 202-434-3770.

Sincerely,

DAVID P. SLOANE,  
Sr. Managing Director,  
Government Relations and Advocacy.

Mr. WYDEN. Mr. President, the letter says, and I will read a bit of it:

AARP supports your amendment to the Senate fiscal year 2006 Budget Reconciliation bill to provide for the ability of the Secretary of Health and Human Services to participate in the negotiations between pharmaceutical manufacturers and prescrip-

tion drug plans under the Medicare Part D program.

Prescription drug prices continue to rise much faster than the rate of inflation. AARP's latest Rx Watchdog report released this week found that prices for nearly 200 of the most commonly used brand name medications rose 6.1 percent during the 12 month period from July 2004–June 2005. At the same time, the rate of general inflation was 3 percent. These drug price increases particularly hit older Americans, who use prescription drugs more than any other segment of the U.S. population.

In two weeks, millions of older and disabled Americans will have the opportunity to choose prescription drug coverage as part of their 2006 Medicare benefit options. The new Medicare prescription drug benefit will help millions of beneficiaries afford needed medications. Improvements to the Medicare Modernization Act are necessary to strengthen the benefit and the Medicare program. We believe the first step is to keep the drug benefit affordable for beneficiaries as well as taxpayers.

While the competitive structure already existing in the MMA may help to bring prescription drug prices down, we believe that giving the Secretary the authority to participate in negotiations may also help to make prescription drugs more affordable for Medicare beneficiaries.

Mr. President, there is a bit more to the letter, but I think the Senate can get the general drift.

The AARP, the organization that represents millions of older people, explicitly tonight endorses our bipartisan amendment. They have pointed out that the cost of these medications, the ones that are so important to older people, are going up double the rate of inflation.

Let me emphasize that to the Senate. The drugs that seniors use, the prices are going up double the rate of inflation.

So we need some serious tools to contain these costs. At a time when the

Federal Government ought to be using more effective tools to hold down the costs of medicine, we have locked into law a restriction on the ability of the Government to do what smart shoppers in America do every single day, and that is to use their marketplace clout, bulk purchasing power, to get the best value for them and their families. It is time to lift this outrageous, offensive restriction that is now in Medicare law that prevents the Federal Government from being a smart shopper. It is now time to stand up for taxpayers and stand up for the older people in this country. The Senate will have a chance to do that when it votes on the bipartisan amendment tomorrow that has been filed tonight, will be offered tomorrow, by Senator SNOWE, a bipartisan group. I hope my colleagues will support it resoundingly.

I yield the floor.

---

#### ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 9 a.m. tomorrow morning.

Thereupon, the Senate, at 7:56 p.m., adjourned until Thursday, November 3, 2006, at 9 a.m.

---

#### NOMINATIONS

Executive nomination received by the Senate November 2, 2005:

##### EXECUTIVE OFFICE OF THE PRESIDENT

SUSAN C. SCHWAB, OF MARYLAND, TO BE A DEPUTY UNITED STATES TRADE REPRESENTATIVE, WITH THE RANK OF AMBASSADOR, VICE LINNET F. DEILY, RESIGNED.